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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Larry K. Shumway, Ed.D.
Chief Executive Officer

A handwritten signature in black ink, appearing to read "L. K. Shumway".

DATE: November 4, 2011

ACTION: R277-751 *Special Education Extended School Year* (Amended)

Background: R277-751 *Special Education Extended School Year* has not been substantively amended since 1987. Staff has reviewed R277-751 and determined that amendments to the rule are necessary. The changes provide current definitions, define ESY eligibility and programs in alignment with IDEA 2004 and Utah State Board of Education Special Education Rules (2007), and removed outdated requirements (e.g., reliance on regression and recoupment) that were contrary to an ESY-related 10th circuit court decision.

Proposal: It is proposed that R277-751 *Special Education Extended School Year* as amended be provided to the Instruction, Support, and Technology Committee and the Board for consideration.

Anticipated Action: It is recommended that the Instruction, Support, and Technology Committee consider R277-751 *Special Education Extended School Year* as amended on first reading. If approved by the Committee, the Board will consider R277-751 as amended for approval on second reading.

Contact: Glenna Gallo, 801-538-7757

1 **R277. Education, Administration.**

2 **R277-751. Special Education Extended School Year (ESY).**

3 **R277-751-1. Definitions.**

4 [G]A. "Board" means the Utah State Board of Education.

5 [B.] "Academic year" means the period of a year, which may
6 not be less than the period required by state statute, during
7 which the regular day school is maintained.]

8 B. "ESY" means extended school year.

9 [F]C. "ESY program" means the individualized
10 education[at] program provided by the school to a student with
11 a disability during the [extended school year] ESY.

12 [A]D. "ESY services" means [extended school year
13 services.] special education and related services [which] that
14 are provided to [eligible] a student[s] with a disability
15 [during the period of time between the close of one academic
16 year and the beginning of the succeeding academic year] beyond
17 the normal school year of the LEA, in accordance with the
18 student's IEP, at no cost to the student's parents, and meet
19 the standards of the USOE.

20 E. "FAPE" means a free appropriate public education
21 which includes special education and related services that are
22 provided at public expense, under public supervision and
23 direction, and without charge; meet the standards of the USOE
24 and Part B of the Individuals with Disabilities Education Act
25 (IDEA), 20 U.S.C. 1401(3), include preschool, elementary
26 school and secondary school education in Utah; and are
27 provided in conformity with an IEP that meets the requirements
28 of Part B of the IDEA and Utah State Board of Education
29 Special Education Rules.

30 F. "IEP" means a written statement of an individualized
31 education program by an IEP team and developed, reviewed, and
32 revised in accordance with Utah State Board of Education
33 Special Education Rules and the Part B of the IDEA.

34 G. "IEP team" means a group of individuals that is
35 responsible for developing, reviewing, and revising an IEP for
36 a student with a disability.

37 H. "LEA" means a local education agency which includes

38 school boards/public school districts, charter schools, and
39 the Utah Schools for the Deaf and the Blind.

40 I. "Procedural Safeguards" means the procedural rights
41 designed to protect the rights of students with disabilities
42 and their parents. Requirements are defined in IDEA and Utah
43 State Board of Education Special Education Rules, and include
44 the parent's right to participate in meetings, review
45 educational records, request an independent educational
46 evaluation, receive written prior notice of actions proposed
47 or refused by the LEA, and consent to evaluations and special
48 education services. Procedural Safeguards also describe
49 dispute resolution options.

50 [E] J. "Regression" means reversion to a lower level of
51 functioning, evidenced by a decrease in the level of basic
52 behavioral or academic patterns, or both, or skills, which
53 occurs as a result of an interruption in educational
54 programming. These behaviors or skills are specified on a
55 student's current IEP.

56 [D] K. "Recoupment" means recovery of basic behavioral or
57 academic patterns, or both, or skills, specified on the IEP,
58 to a level demonstrated prior to the interruption of
59 educational programming.

60 L. "Student with a disability" means a student who meets
61 eligibility criteria for special education and related
62 services, as defined in the Utah State Board of Education
63 Special Education Rules.

64 M. "USOE" means the Utah State Office of Education.

65 [E. "Self-sufficiency" means specific skills and
66 behaviors which a student must master to achieve an
67 appropriate level of functioning in view of the student's
68 disability. Each instructional area in the IEP is analyzed to
69 determine its relationship to self-sufficiency in view of the
70 student's needs. The IEP team determines what is an
71 appropriate level of functioning.]

72 [H. "Multidisciplinary team" means an evaluation team,
73 each member of which is qualified in a specialty area related
74 to student evaluation, which includes members from a variety

75 of disciplines. The team must include at least one teacher,
76 or other professional, knowledgeable in the area of the
77 student's disability.

78 I. "MD" means multi-disabilities: concomitant
79 impairments of two or more disabilities, each one of which
80 prevents or interferes with normal functioning to the extent
81 that special education intervention is needed.]

82 **R277-751-2. Authority and Purpose.**

83 A. This rule is authorized under Utah Constitution
84 Article X, Section 3 which vests general control and
85 supervision of public education in the Board, Section 53A-1-
86 402(1)(c) which directs the Board to adopt rules regarding
87 services to students with disabilities and Section 53A-1-
88 401(3) which allows the Board to adopt rules in accordance
89 with its responsibilities.

90 B. The purpose of this rule is to specify the standards
91 for the special education [extended school year] ESY.

92 **R277-751-3. Determining Eligibility.**

93 A. Students eligible for ESY services are:

94 (1) [those classified with MD] students who have been
95 determined as eligible under Utah State board of Education
96 Special Education Rules and Part B of the IDEA; and

97 (2) [those classified as students with severe
98 disabilities under Section 53A-17a-112(3)] students whose IEP
99 team has determined, based upon a review of multiple data
100 sources and factors, on an individual basis, an ESY is
101 required to receive FAPE[?].

102 [(3) those requiring an extended school year to remain
103 in their current least restrictive environment placement;

104 (4) those for whom attainment of their expected level of
105 self-sufficiency and independence is unlikely, in view of
106 their disabilities, without ESY services.

107 B. The multidisciplinary team must document that a delay
108 or break in the provision of special education and related
109 services would result in an education program of little

110 benefit to the student. Despite the lack of definitive
111 documentation, a student with severe disabilities may not be
112 denied ESY services if the IEP team determines the need for
113 such services.]

114 B. The student's IEP shall reflect the IEP team's
115 decision regarding need for ESY services.

116 (1) Parents shall be provided with written prior notice
117 of proposal or refusal to provide ESY services.

118 (2) If determined as eligible for ESY services, the IEP
119 team shall determine the appropriate ESY program, based on the
120 student's individual needs.

121 (3) ESY eligibility decisions and written prior notice of
122 ESY programs shall be provided to parents in sufficient time
123 to permit accessing dispute resolution options of the
124 Procedural Safeguards, in the event of a dispute.

125 [C. The multidisciplinary team shall meet to determine
126 recommendations for eligibility for ESY services.

127 (1) if a student is recommended as eligible, the
128 multidisciplinary team takes necessary steps to convene the
129 IEP team to develop the student's ESY program. If the need is
130 documented, the ESY program may be written into the student's
131 regular IEP,

132 (2) if a student is recommended as ineligible, the
133 multidisciplinary team notifies the student's parents in
134 writing of the decision;

135 (3) both the written recommendation of ineligibility and
136 the scheduling of the IEP must be accomplished in sufficient
137 time to permit any party to exhaust administrative remedies
138 prior to the beginning of the ESY program. Parents shall be
139 informed of their rights and of procedures through which they
140 may challenge the decision of the multidisciplinary or the IEP
141 team.]

142 **R277-751-4. ESY Program Standards.**

143 A. The primary goal[s] for a[+] student[s] requiring ESY
144 services [are]is to [become as functionally independent as
145 possible within the limits of their disabilities and to be

146 maintained in the least restrictive environment appropriate to
147 their needs. A program of special education and related
148 services designed to] maintain[, in the appropriate least
149 restrictive environment,] the current level of [a]the
150 student's academic and functional skills and behavior in areas
151 identified [as crucial in reaching self-sufficiency shall be
152 developed] by the student's IEP [team] in order to provide
153 FAPE.

154 [A. The type and length of the program which a student
155 requires is determined on an individual basis.

156 B. New goals and objectives may not be added to a
157 student's IEP for implementation in the ESY program. Programs
158 shall consist of activities developed to maintain self-
159 sufficiency skills identified on the IEP developed for the
160 academic year.

161 C. Related services shall be provided when required for
162 the student's skills to be maintained.

163 D. The least restrictive environment available during
164 summer programming must be considered for ESY programs.]

165 B. LEAs may not:

166 (1) limit ESY to particular categories of disabilities or
167 particular ages or grade levels of students.

168 (2) unilaterally limit the type, amount, or duration of
169 ESY services provided for students.

170 (3) limit data consideration by IEP teams to only an
171 analysis of regression and recoupment.

172 C. LEAs shall ensure that:

173 (1) ESY student programs are provided in the least
174 restrictive environment.

175 (2) ESY teachers and paraprofessionals meet IDEA's
176 highly qualified requirements.

177 **R277-751-5. Division of Responsibilities.**

178 A. The duties of the Utah State Office of Education
179 shall include:

180 (1) monitoring ESY compliance through:

181 (a) [district] LEA program administrative reviews, such as

182 Utah Program Improvement Planning System (UPIPS) monitoring;

183 [b] making on-site reviews of LEA plans and district
184 special education policies and procedures;

185 [c] providing technical assistance; and]

186 ([d] b) requiring student attendance and membership
187 accountability.

188 (2) providing technical assistance to [districts] LEAs;

189 (3) collecting data on:

190 (a) the number, disabilities, and levels of students
191 served;

192 (b) the types of program delivery models used;

193 (c) costs of the ESY program in LEAs;

194 ([e] d) program effectiveness.

195 (4) developing guidelines for LEAs.

196 B. The duties of [local school districts] LEAs shall
197 include:

198 (1) establishing [district] LEA procedures which are in
199 accordance with Board rules;

200 (2) providing [in-service workshops] professional
201 development and on-site visits to assure that Board and
202 [district] LEA procedures are appropriately understood and
203 implemented;

204 (3) establishing timelines to accomplish the purposes of
205 this rule;

206 (4) analyzing [district-wide] LEA needs, reported by
207 professionals, for ESY services for individual, eligible
208 students;

209 (5) determining [district] LEA ESY program parameters
210 based upon data received from educators on individual,
211 eligible students. The parameters shall include the personnel
212 required to provide special education and related services,
213 location of services, and budget specifications;

214 (6) ensuring parents and professionals have received
215 information about [due process and grievance] dispute
216 resolution procedures for the appeal of ESY eligibility
217 [determinations] decisions and ESY program parameters;

218 (7) implementing processes to collect program

219 effectiveness data.

220 [C. The duties of LEA representatives shall include:

221 (1) establishing multidisciplinary team timelines and

222 programming level procedures in accordance with Board and

223 district rules and policies:

224 (a) setting collection timelines for gathering

225 regression and recoupment data;

226 (b) identifying students who are potentially eligible

227 for ESY services;

228 (c) scheduling multidisciplinary team meetings required

229 to summarize data and make recommendations regarding

230 eligibility;

231 (d) scheduling IEP team meetings to determine

232 eligibility for ESY services and to develop appropriate ESY

233 programs.

234 (2) transmitting relevant information to the district.

235 D. The duties of multidisciplinary teams shall include:

236 (1) reviewing current IEPs for students identified as

237 potentially eligible for ESY services. The team shall

238 identify goals and objectives that are related to areas of

239 self-sufficiency such as:

240 (a) areas essential for minimal independence:

241 (i) muscular control;

242 (ii) toileting;

243 (iii) feeding and eating;

244 (iv) dressing.

245 (b) physical mobility;

246 (c) areas necessary for community living:

247 (i) personal hygiene;

248 (ii) impulse control;

249 (iii) basic communication;

250 (iv) stable relationships as shown by interaction with

251 peers and adults.

252 (2) reviewing data and input collected from educators,

253 other professionals, and parents;

254 (3) recommending from existing information student

255 eligibility for ESY services;

- 256 (4) setting dates for eligible students' IEP team
257 meetings;
258 (5) notifying, in writing, the parents of ineligible
259 students of the recommendation of ineligibility, informing
260 them of their rights, and informing them of procedures through
261 which the recommendation may be challenged. The written
262 notice must be sent in accordance with district timelines;
263 (6) reviewing data collection procedures.

264 E. The duties of educators shall include:

- 265 (1) identifying students potentially eligible for ESY
266 services and verifying the list of students identified as
267 potentially eligible for ESY services;
- 268 (2) identifying IEP goals and objectives related to an
269 area of self-sufficiency which is required to maintain current
270 placement. This may be done at the time the IEP is developed
271 for the academic year;
- 272 (3) indicating known or reported conditions or behaviors
273 that may be exhibited in the educational environment or
274 elsewhere, that, if not provided for in an appropriate
275 educational environment or pro-active educational program, may
276 cause regression. The regression, which must threaten the
277 physical well-being of the student or others or must damage
278 property, must jeopardize the least restrictive environment
279 placement;
- 280 (4) establishing and implementing on-going data
281 collection processes for continuous monitoring of student
282 progress, including data to provide information about the
283 following:
- 284 (a) how often a review of previously introduced material
285 is required;
- 286 (b) whether the student demonstrates inconsistency in
287 the mastery retention of skills;
- 288 (c) critical stages reached by the student in mastery of
289 skills related to areas of self-sufficiency;
- 290 (d) whether the student requires a more intense rate of
291 instruction than similar students with a similar disabilities
292 in order for progress to take place;

293 (e) regression and recoupment periods for a student
294 based on a consensus of input from parents, advocates, and
295 professionals:

296 (i) (AA) a reasonable recoupment period for a break
297 planned by the educational agency of eight to twelve weeks is
298 20 instructional days, of three to four weeks is five to seven
299 instructional days, or two weeks is three instructional days;
300 (BB) exceptions to the number of days constituting a
301 reasonable recoupment period may be granted on a case-by-case
302 basis by the IEP team, consistent with the individualized
303 needs of the student.

304 (ii) sources of data for documenting regression and
305 recoupment periods may include:

306 (AA) achievement of goals on successive IEPs;
307 (BB) progress reports maintained by educators,
308 therapists, and others having direct contact with the student
309 before and after interruptions in the education program;
310 (CC) reports by parents of negative changes in adaptive
311 behaviors over break periods;
312 (DD) medical and other agency reports indicating
313 degenerative-type difficulties which become exacerbated during
314 breaks in educational programming;

315 (EE) observations of educators and others;

316 (iii) techniques to collect data for documentation may
317 include:

318 (AA) daily monitoring;
319 (BB) behavior checklists, student self-assessments,
320 parent assessments, and professional assessments;
321 (CC) documented observation of the student;
322 (DD) specific professional assignment evaluations.

323 (f) the role of a student's parent or guardian in at
324 home follow-up of education programs which are related to
325 areas of self-sufficiency, including the following:

326 (i) the complexity of the program to be carried out at
327 home;

328 (ii) the level of expertise required to maintain skills
329 at home;

330 (iii) the amount of time required.
331 (5) retrieving, at specified intervals, data related to
332 acquired skills and regression and recoupment;
333 (6) evaluating data in multidisciplinary team
334 conferences;
335 (7) reviewing and summarizing, with the
336 multidisciplinary team, data results in a format required by
337 the district;
338 (8) meeting with the IEP team to review regression and
339 recoupment of skills in areas of self-sufficiency.

340 F. The duties of the IEP team shall include:
341 (1) reviewing data and documentation related to extended
342 school year eligibility;
343 (2) reviewing the recommendations of the
344 multidisciplinary team and determining eligibility;
345 (3) developing an extended school year program for
346 eligible students.

347 G. The duties of a parent of a student approved for the
348 ESY services shall include:

349 (1) meeting with the members of the student's IEP team
350 to formulate the IEP and identify goals and objectives related
351 to areas of self-sufficiency;
352 (2) completing parent questionnaires as appropriate;
353 (3) following through with the educational program, as
354 agreed to, at home in concert with school team efforts.]

355 **KEY: exceptional children, school year**

356 **Date of Enactment or Last Substantive Amendment: [1987]2012**

357 **Notice of Continuation: March 3, 2008**

358 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**

359 **53A-1-402(1)(c); 53A-1-401(3); 53A-17a-112(3)**